IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 221 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DALSUKHBHAI CHHITABHAI PARMAR

Versus

KAILASBEN AMBALAL PATEL

Appearance:

MR JAYANT PATEL for Appellants

MR MTM HAKIM for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/07/2001

ORAL JUDGEMENT

1. Heard learned Advocate Mr. Jayant Patel for the appellants and learned Advocate Mr.MTM Hakim for respondents No. 1 and 2. On the facts of the case, it appears that property in question is sold by one Mr. K.M. Shah to respondent No.1 vide sale deed dated 19th March, 1993. Plaintiffs i.e. present appellants entered into an agreement to sale of the suit property with

Mr.K.M. Shah along with irrevocable power of attorney and at this strength i.e. on the strength of irrevocable power of attorney, the land was sold to the present

respondents. This, in fact, is disputed in the suit that the power of attorney executed by the plaintiffs with K.M. Shah was cancelled and/or not executed at all and was not in force and this deed of sale executed by Mr. K.M. Shah with the present respondents suffers from vice of improper and illegal title to alienate the property as well as the deed of sale is hit by the provisions of Bombay Prevention and Fragmentation Act and also since the permission under the Urban Land Ceiling Act is not obtained, the sale in question is void. The relief which was claimed by the plaintiffs is to declare the sale trans[action void and to deliver the possession of the property back to the plaintiffs. In the above said suit, an application Exh.5 for the interim injunction was preferred by the plaintiffs to the extent to restrain defendants to transfer or to change the physical nature of the suit property including construction which may be carried on the suit land.

2. After hearing the parties, the Application at Exh. 5 filed by the plaintiffs was rejected by the learned Trial Judge vide his Order dated 31st March, 2001. Against which, this Appeal From Order was filed by the plaintiffs.

3. The matter was heard finally. In the facts and circumstances of the case, it clearly appears that to decide the issues involved in the suit, recording of the evidence is essentially necessary, without which, it is difficult to come to a conclusion. In this view of the matter, I do not enter into the merits of the case so as to decide the issues legal as well as of facts. Instead, in the interest of justice, the Trial Corut is directed to dispose of the suit as expeditiously as possible but not later than three months. In this view of the matter, without entering into the merits of the case, the Trial Court is directed as under :

" Learned Civil Judge (SD) at Baroda is directed to hear and dispose of Spl. Civil Suit No. 495 of 1998 expeditiously and dipose of the same within three months from the receipt of the writ of this court or producing certified copy of the order by any of the parties. Needless, it is to say that any transfer of the suit property after filing of the suit till disposal of the same if effected by the defendatns, will be subject to

final outcome of the suit. The defendants are directed to inform their transferee about this pending litigation in the Court of Civil Judge (SD) at Baroda. The observations made by the learned Trial Judge while deciding Application Exh.5 vide order dated 31st March, 2001 are at the prima facie stage and shall not come in the way of finally deciding the suit meaning thereby that the Trial Judge shall not be influenced by the observations made in the above said order dated 31st March, 2001 and the suit will be decided independently on the evidence on record."

4. With his order, the Appeal is disposed of. Notice is discharged. No order as to costs. D.S. permitted.

(J.R. Vora, J.)

p.n.nair